

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
Civil Action No.: 3:17-CV-398**

BOJANGLES' INTERNATIONAL, LLC,

Plaintiff,

v.

**HARDEES' RESTAURANTS, LLC and
CKE RESTAURANTS HOLDINGS, INC.,**

Defendants.

**PLAINTIFF'S MOTION FOR
TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

Plaintiff Bojangles' International, LLC ("Plaintiff"), pursuant to Rule 65 of the Federal Rules of Civil Procedure moves this Court for the issuance of a Temporary Restraining Order and Preliminary Injunction enjoining Hardees' Restaurants, LLC, and CKE Restaurants Holdings, Inc. (collectively, "Defendants"), from directly or indirectly infringing the Plaintiff's trademarks as set forth below. Plaintiff is simultaneously filing its Memorandum of Law, the Declaration of K. Randall Poindexter, and the Declaration of Alice C. Richey in support of this Motion and shows the Court the following:

1. Plaintiff is the owner of federally registered trademarks relevant to this matter: (1) CAJUN FILET BISCUIT, U.S. Reg. No. 4,835,122; (2) BOJANGLES' CAJUN SPICED CHICKEN, U.S. Reg. No. 1,177,496; (3) BOJANGLES' CAJUN PINTOS, U.S. Reg. No. 1,218,514; (4) IT'S CAJUN SPICED, U.S. Reg. No. 1,175,371; and (5) GOTTAWANNANEEDAGETTAJAVA, U.S. Reg. No. 4,056,307.

2. Sometime in June, 2017, Defendants, on behalf of themselves and their franchisees, began promoting a chicken biscuit (the "Infringing Good") using the mark "Cajun

Chicken Fillet Biscuit.” (the “Cajun Infringing Mark”). Defendants also used the mark “Gotta Wanna Needa Getta Hava” (the “Gotta Infringing Mark”) to promote the Infringing Good. (The “Cajun Infringing Mark” and “Gotta Infringing Mark” are collectively referred to as the “Infringing Marks.”).

3. Defendants are promoting the Infringing Good with the Infringing Marks on social media, billboards, point of sale information including signage, reader boards, and menu boards, print and television ads, and website references.

4. On June 7, 2017, Plaintiff filed a Verified Complaint, which asserts claims against Defendants for (1) trademark infringement under the Lanham Act, 15 U.S.C. § 1114; (1) unfair competition and false designation of origin under the Lanham Act 15 U.S.C. § 1125; (3) unfair and deceptive trade practices under N.C. Gen. Stat. § 75-1.1; (4) contributory trademark infringement and contributory false advertising against Defendant CKE; and (5) vicarious trademark infringement against Defendant CKE.

5. Plaintiff is likely to succeed on the merits of its claims against Defendants.

6. As a proximate result of Defendants’ infringement, Plaintiff is suffering immediate and irreparable injury for which it has no adequate remedy at law.

7. The balance of hardships tips in favor of Plaintiff.

8. The General Counsel for Defendants has agreed to accept process of service; Plaintiff provided him with a copy of the filed Complaint on the day of filing. Counsel will serve Defendants with the Complaint, all case opening documents, and this Motion and related filings immediately after filing. Plaintiff will also provide Defendants with prompt notice if the Court schedules a hearing. Prior to any hearing, Plaintiff’s counsel will file a Declaration setting

forth its efforts to provide notice. Upon proof of such notice, Plaintiff respectfully requests that the Court treat this Motion as one for a preliminary injunction.

9. Pursuant to Fed. R. Civ. P. 65(c), Plaintiff is prepared to give sufficient security in an amount the Court deems proper.

In further support of its Motion, Plaintiff refers the Court to its Verified Complaint filed on July 7, 2017, Plaintiff's Memorandum in Support of its Motion for Preliminary Injunction, the Declaration of Randall Poindexter, and the Declaration of Alice C. Richey, filed concurrently with this Motion. Based on the foregoing, Plaintiff respectfully requests:

A. That this Court issue a preliminary injunction prohibiting Defendants, their officers, directors, agents, principals, divisions, sales representatives, employees, franchisees, subsidiaries, affiliates, successors and assigns, and all persons acting by, through, under, or in active concert or participation with or controlled, either directly or indirectly, by Defendants from using, directly or contributing to the use of, the Infringing Marks or any substantially similar variations thereof, including specifically "CAJUN CHICKEN FILLET BISCUIT," "CAJUN CHICKEN BISCUIT," and "GOTTA WANNA NEEDA GETTA HAVA" in connection with the offering, selling, packaging, labeling, advertising, promoting, marketing, selling, or distribution of any quick-service food products, or any other related goods, and from otherwise infringing the Proprietary Marks;

B. That this Court enter a preliminary injunction requiring Defendants to remove all use of the Infringing Marks or any substantially similar variations thereof, including specifically "CAJUN CHICKEN FILLET BISCUIT," "CAJUN CHICKEN BISCUIT," and "GOTTA WANNA NEEDA GETTA HAVA" from their advertisements, exterior and interior signage, point of sale materials, social media, websites, and all other uses in any material or medium;

- C. That Defendants cease the sale, marketing, and promotion of the Infringing Good;
- D. That Defendants be ordered to file with the Court and serve on counsel for Plaintiff within 10 days after entry of any preliminary injunction issued a report setting forth in detail, under oath, the manner in which Defendants have complied with the injunction; and
- E. That Defendants be ordered to produce an accounting for all profits derived by Defendants from their unlawful acts.

Respectfully submitted this 11th day of July, 2017.

ALEXANDER RICKS, PLLC

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION** with the Clerk of Court using the CM/ECF system and I hereby certify that I have served the document via Federal Express overnight delivery to the following non CM/ECF participants:

Charles A. "Chip" Seigel III
CKE Restaurants Holdings, Inc.
Chief Legal Officer
6700 Tower Circle, STE 1000
Franklin TN 37067

This 11th day of July, 2017.

ALEXANDER RICKS, PLLC

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